

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Cummings Vacuum Service, Inc.
(AKA: Cummings Transportation)
19609 Broken Court
Shafter, California 93263

ID No. CAD981435621

Respondent.

Docket HWCA 20071557

CONSENT ORDER

Health and Safety Code
Section 25187

1. INTRODUCTION

1.1. The California Department of Toxic Substances Control (Department) and Cummings Vacuum Service, Inc. (Respondent) enter into this Consent Order (Order) and agree as follows:

1.2. Respondent generates, stores, and offers for transportation hazardous waste at 19609 Broken Court, Shafter, California.

1.3. Inspection. The Department inspected the Site on March 21, 2007.

1.4. Authorization Status. Registered Transporter of Hazardous Waste.

1.5. Jurisdiction. Health and Safety Code, section 25187, authorizes the Department to order action necessary to correct violations and to assess a penalty when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

1.6. Full Settlement. This Order shall constitute full settlement of the violations alleged below. The Parties, and each of them, agree that this Order, and all of the terms contained herein, are fair, reasonable, and in the public interest. By agreeing to this Order, the Department does not waive any right to take other enforcement actions except as specifically provided in this Order.

1.7. Hearing. Respondent waives any and all rights to a hearing in this matter.

1.8. Admissions. Respondent admits the violations as alleged in Section 2 below.

2. VIOLATIONS ALLEGED

2.1. The Department alleges the following violations:

2.1.1 Respondent violated California Health and Safety Code, section 25201 in that on or about March 21, 2007, the Respondent stored hazardous waste for over 90 days and failed to have a hazardous waste facilities permit or other grant of authorization from the Department.

2.1.2 Respondent violated California Code of Regulations, Title 22, section 66262.34 (a) & (f) in that on or about March 21, 2007, the Respondent failed to properly label storage tanks and containers holding hazardous waste, (waste oil, waste antifreeze, and used oil filters).

2.1.3 Respondent violated California Code of Regulations, Title 22, sections 66262.34(a)(4) and 66265.31 in that on or about March 21, 2007, the Respondent failed to maintain and operate to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to

air, soil, or surface water which could threaten human health or the environment by allowing waste oil to accumulate on the ground around the cement pad where the waste oil storage tank is located.

2.1.4 Respondent violated California Code of Regulations, Title 22, section 66262.34(a)(1) and 66265.193 (a) in that on or about March 21, 2007, the Respondent failed to have adequate secondary containment for tanks holding hazardous waste to prevent the release of hazardous waste or hazardous waste constituents to the environment.

2.1.5 Respondent violated California Code of Regulations, Title 22, section 66262.12(a) in that on or about March 21, 2007, the Respondent stored and offered for transportation hazardous waste without having received an identification number.

3. SCHEDULE FOR COMPLIANCE

3.1. Respondent has corrected the violations set forth above.

3.1.1 Respondent shall provide the Department a written response of what measures have been taken to implement contingency plan measures to remediate the oil staining in and around the waste fluid storage area. The written response shall be submitted to the Department within 30 days of the effective date of this Order.

3.1.2. Respondent agrees to send Tom Pruitt, Cummings Vacuum Service, Inc.'s facility manager to California Compliance School and complete the following Hazardous Waste Generator Training Modules.

Modules I – Hazardous Waste Identification and Overview

Module II – Onsite Management Requirements

Module III – Transportation

Module IV – Preparedness, Prevention, & Training

Module V – Onsite Recycling & Tiered Permitting.

Attendance must be completed and Respondent must submit a Certificate of Satisfactory Completion issued by the California Compliance School to the Department within 185 days of the date of this Order. In recognition of this educational investment, the penalty imposed by this Order has been reduced by \$5,000 if the employee specified above satisfactorily completes the specified modules and the Department receives the Certificate of Satisfactory Completion within 185 days of the effective date of this Order.

If the Respondent fails to submit the Certificate of Satisfactory Completion as required, the penalty of \$5,000 is due and payable within 30 days after the 185-day period expires. The 185-day period may be extended by a Department Branch Chief upon a written request demonstrating good cause from Cummings Vacuum Service Inc.

3.1.3 Respondent shall make all payments at the time(s) and in accord with any other conditions set forth in Section 5 (Penalty) below.

4. OTHER PROVISIONS

4.1. Liability. Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Order.

Notwithstanding compliance with the terms of this Order, Respondent may be required to take such further actions as are necessary to protect public health or welfare or the environment.

4.2. Penalties for Noncompliance. Failure to comply with the terms of this Order may subject Respondent to costs, penalties and/or damages, as provided by Health and Safety Code, section 25188, and other applicable provisions of law.

4.3. Parties Bound. This Order shall apply to and be binding upon Respondent and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Order.

4.4. Integration. This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this Order.

5. PENALTY and PAYMENTS

5.1. Respondent shall pay the Department the total sum of \$11,000 of which \$11,000 is a penalty and \$0.00 as reimbursement of the Department's costs incurred in this matter.

5.2 California Compliance School Penalty Credit: The penalty amount of \$11,000 shall be reduced by \$5,000, conditioned upon the Respondent's satisfactory completion of the requirements of paragraph 3.1.2 within 185 days of the effective date

of this Order. If the Respondent fails to complete the requirements of paragraph 3.1.2 within the prescribed time, the penalty credit amount of \$5,000 shall be due and payable within 30 days after the 185 day period expires.

5.3 Payment of the total sum specified in paragraph 5.1, excluding the penalty credit specified in paragraph 5.2, is due within 30 days from the effective date of this Order.

5.4 Respondent's check shall be made payable to Department of Toxic Substances Control, shall identify the Respondent and Docket Number, as shown in the caption of this Order, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check(s) shall be sent to:

Mr. Dale Hoverman, Unit Chief
Enforcement and Emergency Response Program
1515 Tollhouse Road
Clovis, California 93611

and

James J. Grace, Esq.
Office of Legal Counsel
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

5.5. If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code, section 25360.1, and to pay all costs incurred by the Department in pursuing collection, including attorney's fees.

6. EFFECTIVE DATE

6.1. The effective date of this Order is the date it is signed by the Department.

Dated: October 4, 2007

Original signed by Ted Cummings
Respondent

Dated: October 4, 2007

Original signed by Dale Hoverman
Department of Toxic Substances Control